

**MINUTES OF THE
CITY PLANNING COMMISSION
J. MARTIN GRIESEL CONFERENCE ROOM
TWO CENTENNIAL PLAZA – SUITE 700
805 CENTRAL AVENUE
September 2, 2005**

CALL TO ORDER

Ms. McCray called the meeting to order at 9 am.

Commission Members:

Present: Ms. Hankner, Ms. Holston, Mr. Mooney Ms. McCray, Mr. Paddock, and Mr. Tarbell; Mr. Faux arrived at 9:12 am.

Members Absent: Ms. Lemmie

Community Development and Planning Staff:

Margaret Wuerstle, Renee Christon, Adrienne Cowden, Caroline Kellem and Larry Harris

Law Department:

Steve Fagel

APPROVAL OF MINUTES

Submission of the minutes from August 19, 2005 Planning Commission meeting for approval.

Motion: Mr. Mooney motioned approval of minutes.
Second: Ms. Hankner
Ayes: Ms. Hankner, Ms. Holston, Ms. McCray, Mr. Mooney, Mr. Paddock and Mr. Tarbell
Nays: None, **motion carried**

DISCUSSION ITEMS

ITEM #2 A report and recommendation on a Subdivision Improvement Plan for the Villages of Daybreak Subdivision – Phase Three, located south of Seymour Avenue, west of Rhode Island Avenue and north of Langdon Farm Road in the neighborhood of Bond Hill.

Caroline Kellem Senior City Planner presented this report

CDS Associates, Inc., civil engineers on behalf of Allen Temple-Tried Stone Development, Ltd., the owner and developer submitted a Subdivision Improvement Plan for the Villages of Daybreak Subdivision – Phase Three. The plans have been reviewed and approved by all reviewing agencies.

BACKGROUND:

The Villages of Daybreak Subdivision comprises what was once Huntington Meadows housing project. The previous multi-family rental structures have been removed. The plan is to create a new community with single-family home sites and single family attached condominiums. The entire subdivision is 30 acres in size north of Langdon Farm Road.

On October 15, 2004 the City Planning Commission approved a Subdivision Improvement Plan for Phase One, “A” and “B” and subsequently on November 15, 2004 approved a Plat of Subdivision for Villages of Daybreak Subdivision – Phase One, “A”. The Plat of Subdivision for Villages of Daybreak Subdivision – Phase One, “B” was approved on March 4, 2005. The Subdivision Improvement Plan for Phase Two was approved on March 4, 2005 and Plat of Subdivision for Phase Two was approved on April 1, 2005.

The Cincinnati Home Builders Association presented CiTiRAMA 2005 in May of 2005 for new single-family homes fronting along the east side of Rhode Island Avenue within Phase One, “A”. Additional phases of the housing project are currently under construction.

SUBDIVISION:

Storm water detention was approved and constructed as a part of the Phase One subdivision improvement plan development.

The existing zoning is Planned Development (PD) No. 38. The City Planning Commission approved the Final Development Plan for the Villages of Daybreak on November 19, 2004.

RECOMMENDATION:

The staff of the Department of Community Development and Planning recommended that the City Planning Commission take the following action:

“Authorize the development of the Villages of Daybreak Subdivision – Phase Three to proceed for the reason that the plans conform to the subdivision regulations and comply with the requirements of all involved agencies.”

DISCUSSION

The Planning Commission members were interested in the progress of the Villages of Daybreak Subdivision. Ms. Holston informed the members that there has been more participation in this CiTiRAMA than any other that the City sponsored.

Mr. Jeff Peddler, developer summarized the progress that has taken place at the Village of Daybreak. He stated that nine homes and one townhome were completed. He stated that Phase II would begin in two weeks.

Ms. Hankner suggested that “sold signs” should be placed on the lots

- Motion:** Ms. Hankner motioned approval of the staff recommendation.
- Second:** Ms. Holston
- Ayes:** Ms. Hankner, Ms. Holston, Ms. McCray, Mr. Mooney, Mr. Paddock and Mr. Tarbell
- Nays:** None, **motion carried**

ITEM #5 **By Leave** – a report and recommendation on a Plat of Subdivision for lot No.1 of the Fulton Place Townhouse Subdivision located in Walnut Hills

Adrienne Cowden Senior Development Analyst presented this report

BACKGROUND

On August 1, 2005 First Fisher Properties, LLC submitted a Plat of Subdivision for Lot No. 1 of the Fulton Place Townhouses Subdivision in Walnut Hills into two lots. The subject property is located on an unnamed private drive leading off Fulton Avenue and is situated 110’ west of Fulton Avenue. The property is zoned RM-2.0 (Residential Multi-Family), a multi-family medium density district requiring 2,000 square feet for newly created lots.

On April 6, 2005 Steven A. Kurtz, the Zoning Hearing Examiner, conducted a public hearing to consider a request for Zoning Variances for the setbacks and lot size to permit the construction of two row houses on the subject property. Mr. Kurtz approved the variances with conditions; one condition

required the lot to be split into two separate parcels prior to the issuance of any permits First Fisher Properties; LLC is requesting approval of its Plat of Subdivision to meet this condition.

SUBDIVISION:

Under § 410.1(d) of the Rules and Regulations of the City Planning Commission, any person who wishes to establish a subdivision on a private street must submit a Certificate of Access along with the application for subdivision. This certificate shall consist of a letter from an attorney experienced in real estate matters certifying there is legal access to the property for subsequent owners and the street is open to emergency vehicles. In addition § 410.1(d) states, in part, that the subdivision, by plat, of lots fronting on an existing private street is permitted if the private right-of-way is a minimum of 21’-0” wide with an 18-0” wide pavement constructed to meet requirements of § 1229-12 of the Cincinnati Fire Prevention Code.

The plat of subdivision illustrates the subdivision of Lot No. 1 into two lots, identified as Lot 1A and Lot 1B. Lot 1A contains 1,727 square feet and Lot 1B has 1,651 square feet. Both lots front on an unnamed private street accessed from Fulton Avenue. According to the submitted plat, the private street has an established width of 24’-6” and an existing concrete pavement of 18’-0”, thus meeting the requirements of § 410.1(d). John D. Halpin, Attorney at Law, submitted a Certificate of Access with the application for subdivision in compliance with § 410.11. This certificate verifies that the subject property is open and accessible to current and subsequent property owners as well as emergency vehicles.

RECOMMENDATION:

The Department of Community Development & Planning staff recommended that the City Planning Commission:

“Approve the proposed Plat of Subdivision for Lot No. 1 of the Fulton Place Townhouses Subdivision, finding that the plat conforms to the Subdivision Regulations and has the approval of all reviewing agencies.”

DISCUSSION

Mr. Paddock was informed by staff that the By-Leave report was before the Commission according to the rules and regulations that stated that staff cannot stamp deeds for a Subdivision on a private street. Ms. Wuerstle explained that the request was not received until after the Planning Commission packets were mailed. The developer could not wait until the next Planning Commission meeting. She explained that the Commission had the authority to decide if they would consider this item at this meeting or wait until the next meeting.

Ms. McCray suggested that in the future By Leave items be sent by email to the Planning Commission members prior to the meeting.

- Motion:** Mr. Mooney motioned approval of the staff recommendation.
- Second:** Ms. Hankner
- Ayes:** Mr. Faux, Ms. Hankner, Ms. Holston, Ms. McCray, Mr. Mooney, Mr. Paddock and Mr. Tarbell
- Nays:** None, **motion carried**

Caleb Faux joined the meeting at 9:12 am

ITEM #1 A report and recommendation to rezone a portion of the RMX district along Greenwood Avenue and south Fred Shuttlesworth Circle in North Avondale from RMX to SF-10.

Larry Harris, Senior City Planner presented this report

BACKGROUND:

On May 6, 2005 the Cincinnati Planning Commission (CPC) voted to amend the zoning code to include text amendments to the RMX district citywide. Marvin Kraus, legal advisor to the North Avondale Community Council, testified to the CPC that the community was concerned that the RMX amendments did not protect the overall development of some large parcels, specifically those in North Avondale. In consideration of the unique large lots in the RMX district in North Avondale, the CPC recommended a zone change study of the RMX district in North Avondale between Greenwood Avenue and South Fred Shuttlesworth Circle. The area is currently covered by IDC #58. On June 29, 2005 City Council passed a second extension of IDC #58 which would allow the completion of the zone change study. The second extension of IDC #58 will expire on February 12, 2006.

The zone change study approved by the CPC was for consideration of a change for a portion of the RMX district to SF-4, a single-family district with a minimum lot size of 4000 square foot per unit.

ANALYSIS:

The staff held a public conference on May 17, 2005 to take input from the public on the proposed zone change. Advanced notice on the date and time of the conference was given to the public by regular mail. No one from the public attended the conference even though notice was mailed twenty-one days before the conference date. Staff did not receive any phone calls from any affected property owners or members of the community council for North Avondale. In June 2005, staff contacted the community council to inform them of the status of the zone change study. The council contact, Ms. Charlene Morse informed staff that the item would be placed on the July 12, 2005 agenda for the general meeting of the community council and a notice would be placed in the community news letter informing the public of the pending zone change.

On July 12, 2005 a presentation of the proposed zone change was made and comments were received from community residents. None of the affected residents objected to the zone change. However, the residents voted to reduce the density guidelines for the proposed single-family rezoning from SF-4 to SF-10. Staff does not oppose the SF-10 designation because an existing SF-10 district southwest of the RMX district could be expanded to include the subject properties.

FINDINGS:

The zoning study found that twenty-five (25) of the fifty-one (51) properties in the RMX district or approximately half, have lot sizes of 10,000 square foot or larger. Most of the affected buildings were built as single-family residences and are currently used as single-family residences. The study found that the current RMX zoning would permit up to two (2) additional units per parcel with a potential increase of fifty (50) new units in the area. The addition of 50 new units would triple the density in the area, changing its single-family character and the quality of life for the residents.

The study also found that the larger parcels are located primarily along South Fred Shuttlesworth Circle and are adjacent to an existing SF-10 district with similar lot sizes. These are the only parcels with the potential to triple unit densities. The expansion of the existing SF-10 boundary to include the subject properties would support the existing character of the area and encourage those parcels to remain as single-family structures.

CONCLUSION:

A staff conference was held and all affected parties were notified by mail and invited to attend. The notices provided three methods of contact to the staff for information or to voice comments on the issue. Additionally, the community council notified the residents of the proposed change and allowed comments at their neighborhood wide community meeting. Affected residents did state concerns and these concerns are reflected in the proposed zone change recommendation. The proposed zone change would help maintain the single-family character of the area. The zone change would only include those properties 10,000 square foot or larger along South Fred Shuttlesworth Circle.

RECOMMENDATION:

The staff of the City Planning Division recommended that the City Planning Commission:

“Approve the proposed zone change for a portion of the RMX district located along South Fred Shuttlesworth Circle to SF-10 as voted by the North Avondale community council. The staff recommends that the RMX district remain in place along Greenwood Avenue as outlined in this report.”

DISCUSSION

Mr. Mooney questioned whether most of the lots are the appropriate size and then asked what percentage of the properties were more than single family structures.

Mr. Harris answered that less than 10 percent of the structures were multifamily. Ms. McCray asked if the two properties that actually front on Greenwood Avenue were single-family homes. Mr. Harris explained that those two properties were actually Church properties and are actually not residential structures.

Charlene Morse, Coordinator for the North Avondale Association, spoke in favor of the rezoning. She explained that she has been working to save the homes on the street and encouraged people not to break up the homes into smaller units. She stated that it was extremely important that the Commission approve the zone changed to SF-10 to help bring the street back. She explained that the North Avondale Association had purchased 727 Shuttlesworth from the City. This property was once a crack house and they rehabbed the home and sold it for \$165,000.

Gerry Kraus, Zoning Liaison for City Hall for the Neighborhood Association and a member of the Citywide Zoning Task Force spoke in favor of the proposed zoning. She stated that she totally supported the recommendation. She said that in addition to Charlene’s comments, that there were 3 multi-family homes that have been converted back to single-family homes. She felt that this street will be key to whether the whole area will revitalized or deteriorate.

- Motion:** Ms. Hankner motioned approval of the staff recommendation.
- Second:** Ms. McCray
- Ayes:** Mr. Faux, Ms. Hankner, Ms. McCray, Ms. Holston, Mr. Mooney, Mr. Paddock and Mr. Tarbell
- Nays:** None, **motion carried**

OTHER BUSINESS

ITEM #3 Correspondence from Capozzolo Printers, Inc. regarding a hearing on a Northside Comprehensive Land Use Plan.

ITEM #4 Correspondence from Strauss & Troy regarding a hearing on a Northside Comprehensive Land Use Plan.

Item #3 and Item #4 were for informational purposes only.

DISCUSSION

Mr. Mooney asked staff about the status of the Northside Comprehensive Land Use Plan and the timing for those issues to be discussed. The Commission members wanted to make sure that the neighborhood has been provided all necessary information prior to the meeting

Ms. Wuerstle, Chief Planner informed the Board that the Northside Comprehensive Land Use Plan would be presented to the Commission at their next meeting as a draft report and not as a final report.

Caleb stated that everyone in the community had been given an opportunity to participate in development of the plan over the last two years. Not everyone chose to participate.

Mr. Mooney asked Mr. Munitz to give the Planning Commission an update on whether the County was working with the City on The Banks. He stated that the Planning Commission's desire to rezone the Banks property is linked directly to whether or not the County is dealing with the City in a constructive way.

Chad Munitz stated that he had very little conversation with the County representatives since the last Planning Commission meeting. Their biweekly meeting had to be cancelled and the City was scheduled to meet with the County again next Thursday.

Mr. Mooney then asked if the County was sharing information with the City on the proposed development agreement. Chad answered that nothing had changed. Mr. Mooney explained that in his opinion the Planning Commission was not trying to obstruct development but wanted to make sure that there was a structure in place so that the City had a meaningful way of making sure that the plan approved by the City was executed. He went on to say that if there was a way to do that without changing the zoning he would be open to that idea.

Ms. Hankner reminded the Commission that she requested a flow chart of what the process would be for any deviation from the plan and so far she has seen nothing. She stated that maybe the Planning Commission should make another request for the flow chart.

Mr. Paddock said that he was in agreement with requesting the flow chart. He questioned whether the City had thought about the suggestive approach such as outlining how the City believed the Development Agreement oversight process should work rather than just sitting by and waiting passively for the County to propose or not propose a process.

Chad answered that the City was not quite there yet. He stated that the City had retained outside counsel to assist the City with these matters. The City hired a gentleman from Thompson Hines Co. named Tom Kirkwood. Currently he is going through and reading the City's files, documents and agreements on the riverfront.

Mr. Paddock asked if this matter would be before the Planning Commission at the next meeting. He stated that if there was to be consideration of an alternative approach to the PD, then somebody would need to be prepared to articulate such an alternative.

Mr. Faux asked about the status of the Staff Report on this issue. Ms. Wuerstle answered that the Staff Report was prepared and that the minutes from the Staff Conference were finished. The notices went out September 1, 2005.

Mr. Faux stated that he would like to see the Staff Report as soon as possible. Mr. Faux also stated that there had been an article in the newspaper about the Mayor introducing a motion to City Council related to this issue. He wanted to know if that action had taken place.

Mr. Munitz and Ms. Wuerstle answered that the Mayor had not introduced any motion on this issue. Mr. Munitz stated that he felt the Mayor was a little frustrated with the lack of communication between the City and the County.

Ms. Hankner said that the Planning Commission did not want to be labeled as "obstructionist" but it was the only avenue to ensure that the adopted plan was implemented.

Chad Munitz said the next action that he assumed the County would take would be the execution of a Master Development Agreement and that would be between the County and The Banks Development Group.

Mr. Paddock felt that the Planning Commission should explain to City Council the reason that the Planning Council was pursuing the PD rezoning and the intended purpose. He felt that City Council could conceivably hear arguments from a different prospective and take an action on this issue without the Planning Commission ever having an opportunity to make their case.

Mr. Faux explained that once the Planning Commission took action, the PD rezone had to go before Council for a vote. They would have to either accept or not accept the Planning Commission's action on the Planned Development. Therefore, the Planning Commission still had a chance to go before Council and explain their position.

Mr. Paddock suggested that the Planning Commission authorize the Chairman to communicate with Council the Commissions' position on why this is even being considered.

Ms. Kraus took the floor and commented that there was an article in the newspaper by the Cincinnati Zoning Task Force supporting the Planning Commission's position. She suggested that if the Planning Commission had a position that they would like the Mayor to be aware of, she suggested that they act proactively to let the Mayor know. Otherwise, he would have no way of knowing the Planning Commission's official position.

Mr. Tarbell addressed the Chairman and Ms. Wuerstle stating that he received a motion from Mr. Monzel directing the Planning staff to restudy the interim development control chapter of the Zoning Code in order to make the IDC a more useful tool for City Council and the Neighborhoods.

Ms. Wuerstle explained that the Planning Commission recently recommended a zone change at the Wasson and Paxton intersection because of concerns by the neighborhood regarding certain inappropriate development in this area. There was rumor recently that a new application may be submitted to Buildings and Inspections for a permit for such a development before the new zoning is in place. Everybody is concerned and watching very carefully to see what will happen. She explained that the IDC could not be used as a tool to protect properties while a rezoning was in progress.

Ms. Wuerstle went on to explain that the position of the Law Department was that unless there is an approved plan that specifically states that the zoning should be changed from one designation to another, staff could not use the IDC. Oakley does not have a plan that covers the subject area and that recommends zoning changes.

Planning Commission agreed that this was a loophole that was not foreseen. Mr. Mooney stated that the Planning Commission should think about how to amend the IDC regulations so that they could adopt an IDC after they approve a zone change.

Mr. Faux stated that there were two additional things that he had run across recently that he thought were problems with the Zoning Code. One was that the ZBA made a ruling with respect to RP McMurphy's that stated that the current Zoning Code does not permit any outdoor areas associated with drinking establishments. Outdoor drinking is permitted with restaurants but there are no provisions in the zoning code as it stands today that would allow an outdoor drinking area for a bar. He stated that any establishment that has gone into business since the new Zoning Code was adopted is now non-conforming. He explained that the attorney representing RP McMurphy's conducted a survey of the City and filed a complaint with Bill Langevin about every single outdoor drinking area.

Mr. Faux explained that the problem is a language issue that makes certain restrictions for outdoor areas such as the outdoor area can be no more than 25 percent of the square footage of the restaurant and limits hours of operation. The Building Department interpreted a footnote in one of the tables to mean that outdoor areas are permitted with drinking establishments but there are absolutely no regulations in the code providing limitations on size or hours of operations. As a result, the ZBA was put in an position of either saying they are permitted in which case there are absolutely no regulations whatsoever or alternatively that they are not permitted. This Commission needs to establish the regulations that are appropriate for outdoor drinking areas. He said that they needed to act on that quickly because there are businesses operating that are going to have problems as a result of the recent decision.

Mr. Tarbell moved that the staff examine that issue and establish some precise rules.

Ms. Wuerstle asked if the motion was to instruct staff to look at both the IDC issue and the outdoor drinking issue and bring Zoning Code text amendments back to the Commission.

Mr. Faux stated that another issue was outdoor lighting. The ZBA also had a case pertaining to the softball complex in California. He said that the Zoning Code does provide for some regulation of exterior lighting, but that regulation is basically designed for parking lots and it really does not address the type of lighting on athletic fields. That particular case arose because the property owner replaced existing lights with new more powerful lighting that seriously affected the neighborhood. The ZBA discovered that the Zoning Code does not provide any regulations on this issue. This issue is not as pressing as the IDC and outdoor drinking areas but it may cause problems.

Mr. Mooney said that the motion should include all three issues but that the priority should be the IDC as opposed to the lighting issue.

Motion: Ms. Hankner motioned that Staff prepare Zoning Code Text Amendments to address the problems discussed regarding the IDC regulations, Outdoor Drinking Areas and Exterior Lighting.
Second: Ms. McCray
Ayes: Mr. Faux, Ms. Hankner, Ms. Holston, Ms. McCray, Mr. Mooney, Mr. Paddock and Mr. Tarbell
Nays: None, **motion carried**

ADJOURN

Motion: Mr. Tarbell motioned to adjourn.
Second: Mr. Paddock
Ayes: Mr. Faux, Ms. Hankner, Ms. Holston, Ms. McCray, Mr. Mooney, Mr. Paddock and Mr. Tarbell
Nays: None, **motion carried**

Margaret A. Wuerstle, AICP
Chief Planner

Caleb Faux, Chair

Date: _____

Date: _____